RIDER A – SPECIAL PROVISIONS
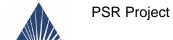
1. <u>Invoices</u>

    (a)   Invoices shall be sent, in triplicate, stating the Agreement Number to:

    >   California Public Employees' Retirement System
    >   FSA Accounting
    >   P.O. Box 942703
    >   Sacramento, CA 94229-2703

    (b)   Contractor shall submit invoices for accepted deliverables as specified in Rider I, Exhibit 2 in accordance with the payment schedule defined in the Development Milestone Payment Schedule below.   Payment shall be made when a Major Development Milestone has been reached and CalPERS has approved all interim deliverables and criteria established in the Deliverable Expectations Document (DED) as specified in Rider I, Exhibit 2.

Payment No.	Development Milestone Payment Schedule	Percent
1	Initiation (Phase 1)	1.0%
	Unilateral Off-Ramp	
2	Planning (Phase 2)	4.0%
3	General Design (Phase 3)	6.0%
4	Detailed Design (Phase 4)	9.0%
	CalPERS Off-Ramp	
5	Implementation of Contracts Business Component (Phases 5, 6, 7, 8, 9 and 10)	13.5%
	CalPERS Off-Ramp	
6	Implementation of Enrollment Business Component (Phases 5, 6, 7, 8, 9 and 10)	13.5%
	CalPERS Off-Ramp	
7	Implementation of Contribution Business Component (Phases 5, 6, 7, 8, 9 and 10)	21.0%
	CalPERS Off-Ramp	
8	Implementation of Benefit Payment Business Component (Phases 5, 6, 7, 8, 9 and 10)	29.5%
	CalPERS Off-Ramp	
9	Final System Acceptance (Phase 11)	2.5%
	Total Payments for Development	**100%**

Table A.1 Development Milestone Payment Schedule

(c)   Contractor may invoice for hardware and operating system software when delivered at the cost specified on Rider B unless CalPERS has exercised its option to order the hardware directly. Contractor may not purchase or invoice for hardware more than six (6) months in advance of when the hardware will be needed at CalPERS.

(d)   Contractor may invoice for software when delivered at the cost specified in Rider C.

(e)   Contractor may invoice for equipment and operating software maintenance as specified in Rider F.

(f)   Contractor may invoice for Work Authorizations as specified in Rider I, Section 7.

(g)   Contractor may invoice for ongoing software maintenance/license costs and ongoing system support and operations costs as specified in Rider G.

2.   <u>Holdback Payment</u>

(a)   Ten percent (10%) of the total invoiced amount will be deducted from each of Contractor's payments, as specified in this Rider A, as a holdback. Interest will be paid on the holdback amount at the Pooled Money Investment Account rate from the point of holdback until final holdback payment is released. No holdback will be made on pass-through payments for hardware and software other than the application software product developed or modified for this project.

(b)   Payment of the total holdback amount will occur in four equal payments scheduled in three-month increments and will begin no later than 180 days after Final System Acceptance.

(c)   Contractor will provide an invoice for twenty-five percent (25%) of the total amount held in the holdback fund. CalPERS will, when making the payment, itemize the holdback amount and any interest accumulated on that amount during the holdback period.

        (1)   If, during the 180-day period CalPERS identifies additional defects with the components delivered and accepted by CalPERS, the holdback payments will not commence until all defects have been resolved by the Contractor and accepted by CalPERS.

        (2)   If holdback payments have already begun, they will be stopped and Contractor will be provided written notification from CalPERS. Holdback payments will not commence until all defects have been resolved by Contractor and accepted by CalPERS.

3.   Indemnification

Contractor shall indemnify, defend and save harmless the State of California, CalPERS, the CalPERS Board of Administration (Board), the California Public Employees' Retirement Fund, and all of the officers, trustees, agents and employees of the foregoing, from and against any and all losses, costs, liabilities, damages or deficiencies, including interest, penalties and attorneys' fees, which (i) arise out of or are due to a breach by Contractor of any of its representations, warranties, covenants or other obligations contained in this Agreement, or (ii) are caused by or resulting from Contractor's acts or omissions constituting bad faith, willful misfeasance, negligence or reckless disregard of its duties under this Agreement, or (iii) accrue or result to any of Contractor's subcontractors, material men, laborers or any other person, firm or corporation furnishing or supplying services, material or supplies in connection with the performance of this Agreement.

4.   Performance Bonds

(a)   Within twenty-one (21) calendar days of the Effective Date of this Agreement or as otherwise specified by CalPERS in writing, and prior to commencing any work under the Agreement, Contractor shall provide an executed Performance Bond.

(b)   Contractor shall furnish the Performance Bond to CalPERS in the amount of $____ [one hundred percent (100%) of the Contractor One-Time Costs (excluding hardware and software other than the application software product developed or modified for this project)]. The term of the bond is the duration of the Agreement, including any extensions.

(c)   CalPERS may require additional Performance Bond protection, including increasing the amount of the bond or obtaining an additional bond, in its discretion. Contractor shall be entitled to an equitable adjustment in the price of the Agreement in the event that CalPERS requires Contractor to provide performance bond in an amount greater than required in Subsection (b) of this Section.

(d)   The bond shall be in the form, and from good and sufficient sureties, as approved by CalPERS.

5.   Limitation of Liability

[Note: There will be no limitation on liability unless the QBP submits a proposed mitigation risk analysis document that is acceptable to CalPERS. The analysis must justify the limitation of liability (dollar limit) contained in QBP's proposal. The analysis should identify all major risks and the QBP's proposed mitigation approach including the risk that: 1) implementation of the PSR solution will significantly impact existing interfacing systems and CalPERS customers and 2) failure of the proposed solution could adversely impact the CalPERS Fund.]

6.   Liquidated Damages

Contractor shall be liable for liquidated damages, in the amount per calendar day as specified in the following table, for each day that the Contractor is late in meeting a Major Milestone Delivery as indicated on the approved Project Schedule:

Payment No.	Milestone Payment	Liquidated Damages
1	Initiation (Phase 1)	$0
2	Planning (Phase 2)	$10,000.00
3	General Design (Phase 3)	$10,000.00
4	Detailed Design (Phase 4)	$10,000.00
5	Implementation of Contracts Business Component (Phases 5, 6, 7, 8, 9 and 10)	$10,000.00
6	Implementation of Enrollment Business Component (Phases 5, 6, 7, 8, 9 and 10)	$10,000.00
7	Implementation of Contribution Business Component (Phases 5, 6, 7, 8, 9 and 10)	$15,000.00
8	Implementation of Benefit Payment Business Component (Phases 5, 6, 7, 8, 9 and 10)	$20,000.00
9	Final System Acceptance (Phase 11)	$25,000.00

Table A.2 Liquidated Damages Table

7.   Warranty and Maintenance Periods, Software Upgrade

(a)   Contractor shall warrant that the system will properly function, without material errors, and in accordance with all contractual specifications. In case of any breach of this warranty, Contractor shall promptly and at its sole expense remedy the breach. The duration of this warranty shall be one (1) year from Final System Acceptance.

(b)   For two (2) years, at the charges specified in Riders F and G Contractor shall provide (i) equipment maintenance and (ii) ongoing system support and operations.

(c)   For two additional years, at the charges specified in Riders F and G, including both parts and labor, Contractor shall, at CalPERS option, continue to provide (i) equipment maintenance and (ii) ongoing system support and operations.

(d)   In case during the one year period following Final System Acceptance a more current version of any business application provided to CalPERS under this

Agreement becomes available, Contractor shall provide that more current version to CalPERS at no additional charge.

(e)   Riders B and C specify for each third party Software Product whether or not the third party provider of the Software Product provides CalPERS a product warranty, either directly or through Contractor on a pass-through basis. Copies of all warranties offered to CalPERS by third party providers of Software Products shall be provided. In each case the copy of the warranty shall be accompanied by a certificate executed by the third party Software Product provider confirming that the warranty is for CalPERS benefit, and may be enforced by CalPERS.

(f)   During final contract negotiations CalPERS and Contractor will work together to identify third party Software Products that are critical to the system and attempt to negotiate further assurances and commitments to be made from third party Software Product provider directly to CalPERS. .

(g)   Contractor shall not be in breach of the foregoing warranty and support obligations to the extent the breach is attributable solely to any defect in a third party Software Product. However, Contractor, without extra charge to CalPERS, shall manage CalPERS relationship with any third party provider of a Software Product to obtain for CalPERS all benefits of any warranty given by the third party provider to CalPERS.